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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/637,213 | 08/07/2003 | Alex Alden Peterson | 293/037Cont 3 | 4084 |
| 1473 | 7590 | 09/12/2006 | EXAMINER | |
| FISH & NEAVE IP GROUP ROPE & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105 | | | | YABUT, DIANE D |
| ART UNIT | | PAPER NUMBER | | |
| | | 3734 | | |

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/637,213 | PETERSON ET AL. | |
| | Examiner | Art Unit | |
| | Diane Yabut | 3734 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 August 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 83-99 is/are pending in the application.
 - 4a) Of the above claim(s) 91-99 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 83-90 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 August 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/19/2003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, Species 8, Figures 21a-21b directed to Claims 83-90 in the reply filed on 10 August 2006 is acknowledged.
2. Claims 91-99 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10 August 2006.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 19 November 2003 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 83-90 are rejected under 35 U.S.C. 102(e) as being anticipated by **Berg et al. (U.S. Patent No. 6,391,036)**.

The applied reference has a common inventors with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim 83: Berg et al. discloses a connector for use in making an artificial, fluid-tight, hollow, annular connection between an end portion of a tubular graft conduit and a side wall of a tubular body conduit in a patient via an artificially created aperture in the side wall of the tubular body conduit so that the tubular graft conduit extends from the tubular body conduit outside of the tubular body conduit and the patient's body fluid can flow between lumens of the tubular graft conduit and the tubular body conduit via the connection, the connector comprising a structure **16** which is annularly continuous and configured for disposition annularly around the outside of the tubular graft conduit, a plurality of first members **14** and a plurality of second members **14** extending from the structure in an annular array which is substantially concentric with the structure, the first

and second members being resiliently biased to extend substantially radially out from the structure and being elastically deflectable substantially parallel to a central longitudinal axis of the structure, the first members being configured to pass through the side wall of the tubular graft conduit at respective locations that are spaced from one another around the side wall of the tubular graft conduit, and the first and second members being further configured to reach respective locations on the side wall of the tubular body conduit that are spaced annularly around the aperture when the connector is in use and the first and second members are extending substantially radially out from the structure (Figure 18 and col. 1, lines 10-26, col. 3, lines 30-32, col. 4, lines 31-67, col. 9, lines 1-15).

Claim 84: Berg et al. discloses the first and second members extending from respective first and second axially spaced portions of the structure (Figure 18).

Claim 85: Berg et al. discloses when the first and second members are being deflected substantially parallel to the central longitudinal axis of the structure, they extend in respective opposite directions away from the structure (Figure 18).

Claim 86: Berg et al. discloses the connector comprising nitinol (col. 4, lines 9-12).

Claim 87: Berg et al. discloses the first and second members being further configured for disposition on respective opposite sides of the side wall of the tubular body conduit when the connector is in use and the first and second members are extending substantially radially out from the structure (Figure 18, col. 1, lines 10-26).

Claims 88-89: Berg et al. discloses the structure being configured for annular and axial flexibility (col. 3, lines 30-32, col. 4, lines 31-67, col. 9, lines 1-15).

Claim 90: Berg et al. discloses the structure and the first and second members being all one piece (Figure 18).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER